

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

v.

GLOBAL HORIZONS, INC.,

Respondent.

CASE NO. OSH 2006-10

DECISION NO. 17

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On May 23, 2006, Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director or Complainant), through the Hawaii Occupational Safety and Health Division (HIOSH) issued a Citation and Notification of Penalty (Citation) to Respondent GLOBAL HORIZONS, INC. (Global Horizons or Respondent). The Citation resulted from Inspection No. 309456853 conducted on March 20 - 21, 2006, and alleged two "serious" violations of the temporary labor camp standards and proposed a \$1,100.00 penalty. Global Horizons contested the Citation by letter, dated June 12, 2006.

Pursuant to the August 16, 2006, initial conference and the Board's subsequent Order, the issues to be determined in this matter were:

- (a) Citation 1, Item 1a - 29 CFR 1910.142(a)(3):
 - (i) Whether Respondent violated 29 CFR 1910.142(a)(3) as described in Citation 1, Item 1a, issued on May 23, 2006?
 - (ii) Whether the characterization of the violation as "Serious" is appropriate? If not, what is the appropriate characterization?
 - (iii) Whether the imposition and amount of the \$1,100.00 penalty is

appropriate? If not, what is the appropriate penalty?

(b) Citation 1, Item 1b - 29 CFR 1910.142(j):

- (i) Whether Respondent violated 29 CFR 1910.142(j) as described in Citation 1, Item 1b, issued on May 23, 2006?
- (ii) Whether the characterization of the violation as "Serious" is appropriate? If not, what is the appropriate characterization?

An evidentiary hearing in this matter was held on April 12, 2007 and May 14, 2007. The parties filed Proposed Findings of Fact and Conclusions of Law on June 1, 2007. The Board issued its Proposed Findings of Fact, Conclusions of Law, and Order (Proposed Order) on June 27, 2007. Global Horizons filed its Objections to the Board's Proposed Order on July 16, 2007. On July 20, 2007, the Board held a hearing for the presentation of oral arguments on any exceptions filed regarding the Proposed Order.¹

Based on a thorough review of the entire record and the arguments presented by the parties, the Board makes the following findings of fact, conclusions of law, decision and order affirming the Director's Citation.

FINDINGS OF FACT

1. Global Horizons was at all relevant times a company engaged in the business

¹Pursuant to Hawaii Revised Statutes § 91-11, whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

Board Chairman Nicholson was not present during the trial in this appeal; however, the Chairman reviewed and considered the entire file in this proceeding, as well as the Objections filed by Respondent, and heard and considered the arguments of the parties on July 20, 2007. See White v. Board of Education, 54 Haw. 10, 14-15, 501 P.2d 358, 362-63 (1972) (requirement that officials who are to render the decision personally consider the whole record or portions thereof cited by the parties is satisfied where the officials considered exceptions to the proposed decision and heard arguments thereon).

of supplying H-2A temporary agricultural workers to local farmers.² Global Horizons was required to provide their workers housing.³

2. During the course of Barnes' examination, she testified about prior inspections⁴ and her conversations with the president and owner of Global Horizons and how the contracts between Global Horizons and all the growers were largely the same. Transcript of April 10, 2007 hearing (Tr.) pp. 29-30. Global Horizons brought the workers from foreign countries, provided benefits, e.g., workers' compensation, to the workers and supervised them. Tr. pp. 27, 30, and 37. Global Horizons had the power to hire and fire the workers. Tr. pp. 27-38 and 36-37. For example, if a grower was dissatisfied with a worker the grower would have to inform Global Horizons of the problem, and it was up to Global Horizons to discipline or remove the worker. Id. Significantly, Global Horizons considered the workers to be their own employees. Tr. p. 59.
3. On March 20, 2006, HIOSH initiated a planned comprehensive inspection of a temporary labor housing site located at 93-2073 South Point Road, Naalehu, Hawaii 96772. The inspection was part of a "local emphasis program" designed to inspect temporary labor camps. The employer designated to be inspected was Global Horizons, Inc. The housing site is a cluster of eight cabins in pairs astride a walkway, with a two-story main house at the end. Workers lived in the small single-room cabins and the second floor of the main house. Morton Bassan, the owner of Kau Gold, owned the housing site. Nineteen Thai and nine Vietnamese workers lived there. The bathroom and kitchen were situated in the two-story house.
4. The inspectors could not perform the inspection on March 20, 2006, because no representative of Global Horizons was at the site. Arrangements were made by phone with Global Horizons' representatives to conduct the inspection the

²Global Horizons filed the application under what is commonly known as the H-2A program, 8 U.S.C. §1101(a)(15)(H)(ii)(a).

³See 29 CFR 655.102(b)(1).

⁴Barnes explained that pre-housing inspections are performed upon request from the Workforce Development Division (WDD), Department of Labor and Industrial Relations, upon applications by Global Horizons to bring in H-2A workers to work on local farms in need of seasonal workers. Tr. pp. 34-35. Global Horizons would submit an application to bring in a set number of workers to be housed at a particular location for a certain period. Id. Her role was to assist the WDD in certifying that the particular house met the housing standard needed by the WDD. Id. If the house met the requirements of the standard, Global Horizons could proceed in the application process. Id.

following day, March 21, 2006.

5. On March 20, 2007, the inspectors looked around the site and observed what appeared to be pig hairs in different places on the walkway between the cottages. A partially open trash bag was located along the walkway between the cabins. A few flies were noted on the bag. The trash bag was not in the trash can because the trash can was full.
6. Flies were also observed above the rooftop of cottage number 7. The roof was about nine feet high. Meat was drying on the roof. A screen net and stones were used to cover and secure the meat. A worker stated that the meat, which was considered "food" by the employees, was left on top of the roof to dry for subsequent consumption. The smell of the meat was not strong. Dozens of flies, meaning 30 or more, were observed.
7. Another area behind the two-story house was used to slaughter and dress the wild pig. The pig was laid on a wooden board. Pig hairs were left in the area, collected in an area about one foot by one foot. "Like dozens" of flies were observed there. The area was about 10 – 15 feet from the back door of the main house. "Pig liquid" was also observed where the hair was found.
8. On March 21, 2006, the site was cleaned, although there were still a few pig hairs remaining and many flies were still found behind the two-story house; however, the trash bag that the inspectors observed the day before along the walkway had been put into the trash can next to it. The trash can and trash bags were provided by Global Horizons for employee use.
9. On March 21, 2006, the animal organs were still on the top of cottage number 7. Sam Wongsesanit (Wongsesanit), Global Horizons' supervisor, stated that the workers killed a pig about one week prior and slaughtered it at the house.
10. Flies were able to get into the lunchroom on the first floor of the main house. The flies would follow a worker into the house. The workers would waive their hands to brush the flies away from their food. The workers would eat there every day except when they were in the field. Flies can carry infectious diseases. If a worker succumbed to an infectious disease that worker could be hospitalized.
11. Global Horizons provided House Rules to the employees in Thai and English, and posted the rules in a conspicuous place. The Rules included, "It is NOT permitted to hunt any wild animal for consumption. This violates health laws and WILL NOT be permitted. No hunting." The Rules also provided that employees were required to maintain the site in a clean condition and clean up

after every meal. Furthermore, Global Horizons did not provide the pig to the employees; the employees found the pig themselves.

12. Wongsesanit was Global Horizons' supervisor for this housing location, as well as the 93-2073 South Point Road and 92-9102 Hula Lane locations (see OSH 2006-14 and OSH 2006-12, respectively). His duties at all three locations were to take care of the employee housing and transportation, and to supervise the employees in the field. Wongsesanit was provided with a "Home Depot" credit card by Global Horizons, and also had petty cash. Wongsesanit could perform repairs himself or could hire outsiders to do it; however, if the work was "major," he was supposed to check with Bob Babanian, the Manager of Housing and Development for Global Horizons. Supervisors are supposed to enforce the rules, and can be disciplined if they do not.
13. One of Wongsesanit's duties was to take care of the house. Although House Rules were in effect for the workers to follow, Wongsesanit stated he could not control the workers. Wongsesanit did not live at the South Point housing (he lived at the Hula Lane house). Wongsesanit did not adequately inspect the South Point Road housing, and/or did not adequately enforce the House Rules with respect to hunting and cleanliness. One of the inspectors stated that the conditions he charged against Global Horizons were caused by employees violating a company rule.
14. The Board finds that Wongsesanit was a supervisor and agent of Global Horizons, such that Wongsesanit's discharge of his duties and failure to enforce the House Rules, and whether he knew or should have known of the presence of a violation, establishes action/inaction and knowledge attributable to Global Horizons.
15. Global Horizons brought the workers from foreign countries, provided benefits (e.g., workers' compensation) to the workers, and supervised them. Global Horizons had the power to hire and fire the workers. For example, if a grower was dissatisfied with a worker the grower would have to inform Global Horizons of the problem, and it was up to Global Horizons to discipline or remove the worker. Significantly, Global Horizons considered the workers to be their own employees.
16. Global Horizons' proposed findings asserting Global Horizons enforced its House Rules and there was no safety or health problems is not supported by the evidence. In addition to the dried pig meat that was found on the roof, the pig's blood and pig hair remained in the area and was not cleaned up immediately. There were flies in the area of the pig blood and meat. It is clear the House Rules were not being enforced, and Wongsesanit stated that he

could not control the employees. Global Horizons knew or should have known of these conditions.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this contested case pursuant to Hawaii Revised Statutes (HRS) §§ 396-3 and 396-11.
2. Global Horizons is an employer within the meaning of HRS § 396-3, which provides in relevant part:

“Employer” means:

* * *

(5) Every person having direction, management, control, or custody of any employment, place of employment, or any employee.

3. To establish a violation of a standard, the Director must prove by a preponderance of the evidence that: (1) the cited standard applies, (2) there was a failure to comply with the cited standard, (3) an employee had access to the violative condition, and (4) the employer knew or could have known of the condition with the exercise of reasonable diligence. Director v. Maryl Pacific Constructors, Inc., OSAB 2001-18 (6/13/02).
4. Citation 1, Item 1a, alleges violation of 29 CFR 1910.142(a)(3), which governs temporary labor camps, and provides in relevant part:

The grounds and open areas surrounding the shelters shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, or other refuse.
5. Citation 1, Item 1b, alleges violation 29 CFR 1910.142(j), which governs temporary labor camps, and provides in relevant part:

“Insect and rodent control.” Effective measures shall be taken to prevent infestation by and harborage of animal or insect vectors or pests.

6. Title 29, Code of Federal Regulations, Subpart J (which includes 29 CFR 1910.142), and its amendments, are incorporated in Title 12, Subtitle 8, Part 2,

Chapter 67.2 of the Hawaii Administrative Rules (HAR), Department of Labor and Industrial Relations, Division of Occupational Safety and Health, General Industry Standards, General Environmental Controls (see HAR § 12-68.7-2).

7. Citation 1, Item 1a, 29 CFR 1910.142(a)(3) [HAR Chapter 12-67.2].

The standard applies because Global Horizons was the employer of the migrant workers and provided housing that was a condition of their employment. The workers slaughtered a wild pig about a week before the inspection. During the inspection, pig hairs and liquid (i.e., pig blood) were found about ten to fifteen feet behind the two-story house; pig organs were seen drying on top of cottage number 7. The pig remains attracted a number of flies to the area. The workers who lived in the housing were exposed to the conditions presented by the presence of the pig remains. Although Global Horizons argued that the pig organs were “food” and not “refuse,” its own House Rules admit that employees are not permitted to hunt wild animals for consumption as that would violate “health laws.” Global Horizons had the responsibility to take care of the premises. One of the supervisor’s duties was to inspect the premises at least once a week and immediately remedy any violative housing condition. Wongsesanit, who did not live on the premises, stated that he could not control the workers. Global Horizons did not adequately conduct periodic inspections of the premises and/or enforce the House Rules. Clearly, Global Horizons should have known of the conditions of the housing if it had conducted adequate inspections.

8. Citation 1, Item 1b, 29 CFR 1910.142(j) [HAR Chapter 12-67.2].

The standard, pertaining to insect control, applies here. Flies were being attracted to the animal organs and hairs in the yard near the housing. Flies occasionally entered the main house where the kitchen was located, and the workers would have to brush flies away with their hands during meals. The congregation of flies on the animal hairs and parts clearly reveals that Global Horizons failed to take measures to prevent the infestation of flies. Wongsesanit was the supervisor of this housing, and had the responsibility to maintain the house and supervise the workers; however, Wongsesanit claimed that he could not control the workers. If Global Horizons had performed adequate periodic inspections of the housing and enforced its House Rules, the flies and the animal debris would have been discovered and remedied.

9. Wongsesanit was a supervisor and agent of Global Horizons, such that Wongsesanit’s discharge of his duties and failure to enforce the House Rules, and whether he knew or should have known of the presence of a violation, establishes action/inaction and knowledge attributable to Global Horizons.

10. Here, flies could carry diseases. Based upon these facts the grouped violations constitute a "serious" violation.
11. The penalty was calculated according to a formula. The possible injury as a result of the unsanitary condition was 'medium' in severity with a 'lesser' probability rating; hence, a gravity-based penalty of \$2,000.00. This was discounted 45% due to three considerations: the size of Global Horizons (101 – 250 employees), its good faith (written safety and health program), and its history (the lack of any serious, willful or repeated violation in the past three years). Hence, HIOSH proposed a final penalty of \$1,100.00 which the Board finds is appropriate.
12. Global Horizons' proposed conclusions asserting Global Horizons enforced its House Rules, that there was no safety or health problems, and that it cannot be liable for the actions of its employees are not supported by the record or law. In addition to the dried pig meat that was found on the roof, the pig's blood and pig hair remained in the area and was not cleaned up immediately. There were flies in the area of the pig blood and meat. It is clear the House Rules were not being enforced, and Wongsesanit testified he could not control the employees. As a supervisor and agent, Wongsesanit's actions/inactions and knowledge are attributable to Global Horizons; accordingly, Global Horizons knew or should have known of these conditions, and is responsible for not adequately inspecting the premises and/or enforcing the House Rules.

ORDER

For the above-discussed reasons, the Board hereby affirms the instant Citation and Penalty. Citation 1, Item 1a - 29 CFR 1910.142(a)(3), and Citation 1, Item 1b - 29 CFR 1910.142(j); the characterizations of the Citation items as "Serious"; and the \$1,100.00 penalty are affirmed.

DATED: Honolulu, Hawaii, August 3, 2007.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chairman



EMORY J. SPRINGER, Member

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SARAH R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Decision at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this order to a duly recognized representative of the employees.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General
Ryan E. Sanada, Esq.